IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) NO.40168 OF 2001

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OFFICE NOTES, OFFICE MEMORANDUM OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS	COURT'S OR JUDGES ORDERS

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CORAM : A. S. OKA, J.
DATE : JUNE 08, 2006.

P.C.:

1. Heard Shri Vidyarathi appearing for the Appellant. The Appellant is the insurer of the vehicle involved in the accident. Shri Vidyarathi pointed out that Appeal is maintainable in as much as a defence which is covered by sub-section 2 of section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act) has been taken before the Tribunal. He submitted that the case of the Appellant was that the driver of the offending vehicle had committed breach of terms and conditions of the policy of insurance. He submitted that in view of the breach, the Appellant was not liable to honour the award which is passed. It is an admitted position that leave under section 170 of the said Act, 1988 was not granted in favour of the Appellant. So far as breach

of conditions of policy is concerned, it is well settled that burden was on the Appellant-Insurer to prove the breach on the part of the insured and his driver. I find that no evidence was lead in that behalf by the Appellant. Hence, the learned Member of the Tribunal rightly held that the Appellant has failed to prove the breach.

2. However, as stated earlier leave under section 170 of the said Act of 1988 was not granted in favour of the Appellant. There is no merit in the Appeal. Appeal is dismissed. No order as to costs. The Appellant will be entitled to withdraw a sum of Rs.25,000/- deposited in this Court in compliance with section 173 of the said Act of 1988.

JUDGE